

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Marvin Dominic Green, #185721,)	
)	C/A No.: 8:06-0626-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
H. Wayne Dewitt, Sheriff,)	
)	
Defendant.)	
_____)	

Plaintiff Marvin Dominic Green, proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983, challenging the arrest warrants and/or affidavits appertaining to the underlying action, and alleging unconstitutional conditions of confinement at the Hill-Finklea (Berkeley County) Detention Center in Moncks Corner, South Carolina.

In accordance with 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A, and issued a Report and Recommendation on March 17, 2006 in which she noted that Plaintiff's claims regarding his arrest and subsequent confinement are barred under Heck v. Humphrey, 512 U.S. 477 (1994). The Magistrate Judge further noted that Defendant cannot be held liable for the actions of medical or food-service personnel under the doctrine of respondeat superior. Accordingly, the Magistrate Judge recommended the case be summarily dismissed without prejudice, and that the case be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. § 1915(g).

The Clerk of Court mailed a copy of the Report and Recommendation to Plaintiff at his last known address at Hill-Finklea Detention Center, 300 California Avenue, Moncks Corner, South Carolina 29461. The envelope containing the order was returned to the Clerk of Court on April 7,

2006, marked “REFUSED AT DETENTION CENTER.” Thereafter, on April 7, 2006, the Clerk of Court located an address for Plaintiff at Kirkland Reception and Evaluation Center, 4244 Broad River Road, Columbia, South Carolina 29210. The envelope containing the Report and Recommendation was returned to the Office of the Clerk of Court on April 17, 2006 marked “WRONG INMATE RETURN TO SENDER.”

Plaintiff was advised by order filed March 17, 2006 of his responsibility to notify the court *in writing* if his address changed. Plaintiff was informed that his case could be dismissed for failing to comply with the court’s order. It appears that Plaintiff no longer wishes to pursue this action. Under these circumstances, the court declines to adopt the recommendation of the Magistrate Judge that the case be summarily dismissed without prejudice. The court concludes that the within action should be dismissed pursuant to Fed. R. Civ. P. 41(b) *with prejudice* for failure to prosecute. The court declines to deem the action a “strike” for purposes of the “three strikes” rule of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

April 19, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.